



Written Submission in respect of Deadline 6 submitted by National Highways Limited

Planning Inspectorate Reference Number: EN070007

Application by Liverpool Bay CCS Limited for an Order Granting Development Consent for the HyNet Carbon Dioxide Pipeline Project

1 Introduction

- 1.1 This document sets out the latest submissions of National Highways Limited (National Highways) provided at Deadline 6 of the examination.
- 1.2 The Authorised Development will have an impact on the Strategic Road Network (SRN) and as such it is critical to the operation of the SRN, the safety of the travelling public and to ensure the proper and efficient use of public resources that the Authorised Development proceeds in consultation and agreement with National Highways and with appropriate protections in place.
- 1.3 National Highways does not object to the principle of the development subject to the inclusion of adequate protections to manage any potential interface between the Authorised Development and the highway and the resolution of the issues relating to compulsory acquisition.

2 Protective Provisions

- 2.1 This section provides an update to the Examining Authority about the Protective Provision for the benefit of National Highways Limited (**National Highways**).
- 2.2 The Protective Provisions requested by National Highways to be included in any made order are at Appendix 2 of this document (**National Highways Protective Provisions**).
- 2.3 The Applicant has provided their comments on National Highways' Protective Provisions in Table 2.20 submitted within their response at Deadline 5. National Highways has responded to their comments and these are annexed at Appendix 1 of this submission.
- 2.4 We set out the justification for the Protective Provisions in the following paragraphs.

3 Justification for the National Highways Protective Provisions

- 3.1 As the strategic highways company appointed by the Secretary of State for Transport pursuant to the Infrastructure Act 2015 and regulated by the Office of Road and Rail, National Highways' primary responsibility is the safety of the travelling public and maintaining the integrity and security of the strategic road network. The strategic road network is a critical piece of national infrastructure, connecting all major towns and cities and carrying a third of all traffic and two-thirds of all freight in England. As a key economic asset, it provides businesses with the means to get products and services to customers, gives access to labour markets and suppliers and encourages trade and new investment. As a result of its vital importance to UK economic interests, National Highways is charged with a number of statutory responsibilities with respect to the management of this operational undertaking.
- 3.2 In the exercise of any of its functions as a public body, National Highways must have regard to the safety of all users of the highway. In addition to safety and pursuant to section 6 of the Infrastructure Act 2015, National Highways has a statutory duty to comply with directions issued by the Secretary of State for Transport. These directions are set out in its Licence and include a duty to hold and manage land and property in line with, and as a function of, the Licence holder's legal duties as a highway authority, and solely for the purposes of operating, managing and improving the highway, unless otherwise approved by the Secretary of State for Transport.
- 3.3 These statutory obligations place a burden on National Highways to ensure that third party development which may impact on its network is both safe to road users and does not interfere with the legal duty placed on National Highways to operate, manage and improve the strategic road network. This is not to say that National Highways is opposed to development which impacts its network and as part of its existing licence obligations, National Highways is required to have regard to and support sustainable development provided that suitable protections for the strategic road network are agreed with the applicant.
- 3.4 The Authorised Development includes works which affect land and property owned and occupied by National Highways for the purposes of its undertaking comprised specifically on the M56 and M53 which are described in Works 12 and 16 and are set out below for completeness.

“Work No. 12: Construction of an underground Carbon Dioxide (CO₂) pipeline approximately 341 metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 11 and Work No. 13 including— (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels; (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route; (c) installation of underground telecommunications cable; (d) construction of a haul road, temporary construction accesses and working areas and laydown area; (e) landscaping,

ecological and environmental works; and (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems. as shown on Sheets 4 and 5 of the Works Plans.

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Work No. 16: Construction of an underground Carbon Dioxide (CO₂) pipeline approximately 386metres in length and with an external diameter of 36 inches (914.4 millimetres) between Work No. 15 and Work No. 17 including— (a) construction and installation of the pipeline by trenched and untrenched methods, including trenchless installation technique pit works, the creation of reception shafts, and launch shafts, and installation of concrete-lined sleeve tunnels; (b) installation of pipeline marker posts and cathodic protection test posts along the pipeline route; (c) installation of underground telecommunications cable; (d) construction of a haul road, temporary construction accesses and working areas and laydown area; (e) landscaping, ecological and environmental works; and (f) drainage works including creation of connections to existing drainage and creation of new sustainable drainage systems including attenuation pond(s). as shown on Sheet 7 of the Works Plans.”

- 3.5 The relevant works which affect the M56 and M53 can be summarised as being trenchless installation techniques to install a pipeline underneath the carriageway.
- 3.6 The proposed Order gives the Applicant wide ranging powers. In addition, at the end of Schedule 1 - to the extent that this work has been assessed by the environmental statement. We have set out the wording at the end of Schedule 1 for completeness.

“...in connection with Work Nos. 1 to 57N, and to the extent that they do not otherwise form part of any such work, development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including— (a) temporary works for the benefit or protection of land, watercourses or structures affected by the authorised development; (b) site clearance (including fencing and demolition of existing structures); (c) earthworks (including soil stripping and storage, site levelling and alteration of ground levels), and remediation of contamination if present; (d) works to alter the position of apparatus at or below ground level including mains, sewers, drains and cables and also including below ground structures associated with that apparatus; (e) watercourse and other temporary crossings; (f) means of access and other vehicular and/or pedestrian means of access, including creation of new tracks and footpaths, and/or widening, upgrades, alterations and improvements of existing roads, tracks and footpaths / alteration of layout of streets to form temporary and permanent accesses, altering the level of any kerb, footway or verge within a street and surface treatments; diversions during construction of existing access routes and subsequent reinstatement of existing routes; (g) surface water

management systems, temporary drainage during installations; (h) landscaping works/ landscaping, planting, vegetation removal, trimming and lopping of trees, tree planting and erection of permanent means of enclosure and boundary facilities including fences and gates, alteration of drains and ditches; / bunds, embankments, swales, landscaping, fencing and boundary treatments; (i) manholes, marker posts, underground markers, tiles and tape; (j) works for the provision or relocation of apparatus including cabling, water and electricity supply works, foul drainage provision; (k) creation, use and reinstatement of crane pads; and (l) works of restoration.”

- 3.6 Examples of wide drafting can also be seen within Article 10 (*Street works*) “...the undertaker may, for the purposes of the authorised development, or for purposes ancillary to it, enter on so much of any other street whether or not within the Order limits...” and Article 11 (*Power to alter layout, etc. of streets*) where “the undertaker may...permanently or temporarily alter the layout of any street...whether or not within the Order limits...”
- 3.7 Whilst it may not be the current intention of the Applicant to carry out any associated development which would impact on the strategic road network, the inclusion of this in the authorised development would give the Applicant all it needed to commence works if a decision to do so was made after the grant of the proposed Order. Consequently, the protective provisions agreed for the protection of National Highways must be read not just in the context of the specific works that have been detailed as they impact the strategic road network, but also those works of associated development that may be subject to change where there could be a potential risk to road users.
- 3.8 We understand the Applicant’s position to date is that the National Highways Protective Provisions provides National Highways with a disproportionate amount of protection when assessed in the context of the work the Applicant proposes to carry out on and in the vicinity of the strategic road network and that not all of the provisions are relevant. We understand that this is because no works are proposed to the surface of the carriageway itself. Respectfully, we disagree with the Applicant and consider that the works proposed (however non-invasive to the carriageway) have the potential to cause significant disruption, damage and injury to the public if not managed in accordance with established protocols. Any sub-surface works (however insubstantial they are expressed to be and using industry established practices) have the potential to cause geological displacement and carriageway settlement to intolerable levels, which is a safety risk to road users.
- 3.9 Given the risk of damage to the strategic road network inherent in any proposed works to take place on, over or in particular in this case, under it, National Highways requests that the Applicant provide financial security in the form of a bond and cash deposit to guarantee that in the event of default on the works, National Highways can access funds to put the strategic road network back into the condition it was in prior to the commencement of the authorised works. This is not a request that is specific to this project and is a policy requirement of

National Highways in respect of all third - party development taking place on, under or over the strategic road network. The Applicant has not agreed to provide the necessary financial protections in the form required by National Highways and the Examining Authority and Secretary of State should note that failure to agree to the financial protections requested by National Highways would leave it open to a substantial risk for which it has no budget in place and for which it is not funded.

- 3.10 Were the Examining Authority and Secretary of State minded to accept the protective provisions in the form proposed by the Applicant, it should be noted that this would expose National Highways to substantial financial risk across all proposed development consent orders in which there is an interface with the strategic road network – which is the vast majority of them. It would be setting a precedent that Applicants for development consent orders do not need to provide financial security to highway authorities for works that affect their networks, exposing them to substantial costs for which they are not funded. It also inherently increases the risk of injury and fatalities, as if National Highways is not funded to carry out emergency works occasioned by third party development, the work cannot be completed to bring the road back up to a safe standard. It is respectfully submitted that it is not for the public purse to subsidise or insulate the potential impact to the strategic road network occasioned by third party developments. This cost should fall squarely on the Applicant bringing forward the development.
- 3.11 A large proportion of the approvals procedure has been struck out of National Highways' form of protective provisions. It is vital that these provisions remain. As is set out within this submission and previous submissions, the proposed Order includes wide - ranging powers in addition to specific works where pipeline is being installed as shown within Works 12 and 16.
- 3.12 National Highways' position is that no third party should be permitted to carry out works to the SRN without the approval and authorisation of National Highways as the strategic highway company with full responsibility for such. Outside of the Planning Act 2008 regime (for example when applications come forward under the Town & Country Planning Act 1990) there is never any dispute on this point. Applicants accept that to carry out any such works to facilitate their development they are required to enter in an agreement with the highway authority pursuant to section 278 of the Highways Act 1980. The position that National Highways takes on Development Consent Order applications mirrors its position for such traditional developments.
- 3.13 National Highways' standard set of protective provisions originated from the company's section 278 agreement. It includes all of the provisions that a developer is required to adhere to when it wants to carry out works to the SRN to facilitate any development. It is needed to secure, inter alia:
 - 3.13.1 Bonds, cash deposits and commuted sums to ensure that National Highways is not exposed financially as a consequence of the Applicant's works as set out above;

- 3.13.2 Road space booking procedures to ensure that network occupancy requirements are managed effectively for the safety of the public and contractors;
 - 3.13.3 Detailed design information to appropriately consider and approve the specification of works in accordance with technical standards;
 - 3.13.4 Appropriate maintenance obligations and defects liability periods;
 - 3.13.5 Collateral warranties from contractors and designers in respect of works undertaken on behalf of the Applicant;
 - 3.13.6 Restrictions on the commencement of works and the use of powers until detailed design specifications are agreed and safety implications have been satisfactorily addressed;
 - 3.13.7 Handover of maintenance responsibilities;
 - 3.13.8 Payment of all reasonable fees incurred by National Highways in respect of the Authorised Development;
 - 3.13.9 Indemnities for any loss incurred by National Highways in respect of the Authorised Development; and
 - 3.13.10 Dispute resolution provisions.
- 3.14 All of these provisions are necessary to ensure the continued safe operation of the SRN, the safety of contractors working on the SRN and to protect National Highways, and therefore the public purse, from any financial risk.
 - 3.15 National Highways contends that specified works which are carried out above or below the carriageway should be covered by the protective provisions. This includes oversailing and undergrounding works. Practically, both of these interfaces with the SRN could result in major loss to National Highways and must be signed off in the usual way as provided for in the protective provisions.
 - 3.16 Any works on, in, over, under or adjacent to the SRN have the potential to be a source of danger to both the travelling public using the SRN as well as those who are carrying out such works. Safety is critical and is National Highways number one imperative. National Highways cannot permit anyone to carry out works to its undertaking without safety being adequately addressed.
 - 3.17 It is National Highways position that its full set of, unaltered, protective provisions must apply to this development in respect of the known works that are to take place. However, of further concern to National Highways is the unknown works that may take place to the SRN to facilitate the Authorised Development as shown in particular within Articles 10 and 11 and the end of Schedule 1 of the proposed Order seeking development consent to carry out unspecified works to the SRN. Given the unknown nature of these works National Highways cannot be left in a position where it does not have full protection for what could amount to significant SRN works.

- 3.18 The Applicant has provided commentary within their Deadline 5 Submission on the areas of disagreement with regards to the protective provisions. National Highways' response to the same is set out at Appendix 2 of this submission.

4 Compulsory Acquisition

- 4.1 National Highways has made representations in respect of compulsory acquisition at various junctures throughout the examination process and does not intend to repeat these representations at this stage. However, in respect of rights, which has become of increasing concern due to where the Applicant and National Highways currently are in respect of the negotiation of protective provisions (which if accepted by the Applicant would deal with National Highways' rights concerns) part of National Highways' concern relates to the uncertainty of the Applicant's intentions. It is not wholly clear whether the Applicant intends to extinguish any rights or interests belonging to National Highways (discussions indicate that the rights would be exercised in common with National Highways' rights yet the Order, as drafted, would permit them to extinguish such rights). National Highways would welcome clarity from the Applicant on this point. It is National Highways' understanding that should the Applicant utilise the compulsory acquisition powers granted by the Order any rights of National Highways shall be extinguished insofar as their continuance would be inconsistent. Whilst it is hoped that rights could co - exist, without certainty on the point there is a risk that National Highways would lose rights which it benefits from and which are needed to fulfil its role as the strategic highway company. It is therefore of utmost importance that the protective provisions include provisions to allow the rights to co - exist and if it is the case as the Applicant has intimated in discussions between the parties that the rights are intended to co - exist, such commitment within the protective provisions should not be of concern to the Applicant and should not be contingent on any separate negotiations relating to other plots.
- 4.2 National Highways needs to ensure that this is done appropriately and in a way where those rights can co - exist with National Highways' own rights. That is why a negotiated agreement is preferable to compulsory acquisition powers and why National Highways' protective provisions are written in the way they are – that is not to prevent or hinder the Applicant in the delivery of their project but to ensure that it is done in a safe and appropriate manner without any detrimental effect to the SRN. National Highways' protective provisions would achieve this which is why they should be included on the face of any made Order.
- 4.3 Outside of the SRN boundary National Highways have interests in third party land for matters such as maintenance access and drainage infrastructure. National Highways often maintains its network and assets from third party land. If these interests are extinguished then the implications for National Highways could be significant. For example if access was no longer available then it could make it impossible for National Highways to carry out its statutory maintenance duties with resultant safety impacts. Similarly if National Highways lost its rights

of drainage over third party land the result could mean flooding to the SRN and the significant safety issues that could result therefrom.

5 Comments on Deadline 5 Submissions

- 5.1 National Highways notes the Applicants comments on National Highways' previous submission submitted at Deadline 5. National Highways does not see that it would be productive to reiterate National Highways' position in respect of these points again at this stage (and has already in this response provided detailed commentary on the protective provisions sought and the compulsory acquisition position particularly in respect of rights) but would be happy to provide further detail on these at any further hearings scheduled if it would assist the Examining Authority.
- 5.2 National Highways does wish however to comment on a couple of distinct points made by the Applicant at Deadline 5. Firstly, in respect of the depth of the pipe, there was a reference to a minimum depth of 4 metres. However, it is unclear from where this commitment has come from and where within the proposed Order documentation such commitment exists. National Highways notes that for example within another response at Deadline 5 the Applicant has referred to the depth being unknown at this stage because detailed design has not yet been carried out. As has been stated at various junctures previously, it is of paramount importance that National Highways' form of protective provisions is agreed so that issues such as ground stability can be monitored and the depth of the pipeline approved to National Highways' satisfaction so that it will not compromise the integrity and safe running of the SRN.
- 5.3 National Highways has already made its submissions in respect of the potentially wide - ranging powers which the Order would permit which could affect the SRN. National Highways does not wish to reiterate these points but stands by the previous submissions and highlights again that whilst it may not be the Applicant's intention, such powers would exist should the Order be confirmed. To alleviate such concerns National Highways has previously suggested that either the powers carve out National Highways SRN or that the protective provisions required by National Highways are included on the face of the Order so that in the event these wide powers are exercised (and only if) National Highways is adequately protected. If the provisions are not triggered, they will not be of effect and so should not be of concern to the Applicant.

6 Conclusion

- 6.1 National Highways is happy to provide further information in respect of this and previous submissions should it assist the ExA.

National Highways Limited

18 July 2023

- Appendices:**
- 1 - Table of comments on protective provisions
 - 2 - National Highways form of protective provisions